IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18365 of 2006

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUNAGADH DISTRICT PANCHAYAT - Petitioner(s)
Versus
SURENDRASINH DAYABHAI RATHOD & 2 - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR RC KAKKAD for Respondent(s) : 1,
MS VAIJAYANTI S.PATHAK, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 05/12/2006

ORAL JUDGMENT

RULE returnable today. Mr.Kakkad waives service of rule. With the consent of the learned advocates, the petition is heard and disposed of today.

The petitioner-Junagadh District Panchayat (hereinafter referred to as, **"the District Panchayat"**) challenges the judgment and order dated 26th June, 2006 passed by the controlling authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as, **"the Act of 1972"**) in Gratuity Application No.56/2005. By impugned order, the District Panchayat has been directed to pay the respondent-employee a gratuity in the sum of Rs.1,75,230=00 and simple interest @ 10% per annum.

Mr.Munshaw has appeared for the District Panchayat. He has assailed the impugned judgment and order. He has submitted that the respondent was the employee of the District Panchayat. Thus, a member of the Panchayat service under the State Government. He being a civil servant, is governed by the rules framed by the State Government in respect of pension and gratuity. He has submitted that the controlling authority has failed to consider the objection raised by the District Panchayat. He has further submitted that while in service the respondent was found to be guilty of misconduct for which he was removed from

service on 31st December, 1999. The said order of punishment is the subject matter of litigation before this Court in Special Civil Application No.23107/2006. He has submitted that in any view of the matter, the controlling authority had no jurisdiction to entertain and decide the application made by the respondent. The controlling authority has thus acted without jurisdiction.

The petition is contested by Mr.Kakkad. He has submitted that against the impugned judgment and order, the District Panchayat has preferred appeal before the appellate authority. Pending the said appeal, the District Panchayat has preferred the present petition. He has submitted that unless the District Panchayat exhausts the alternative remedy availed of by it, the petition in the present nature may not be entertained.

Mr.Munshaw has submitted that it is true that the District Panchayat did prefer appeal before the appellate authority. However, as the District Panchayat failed to deposit the amount of gratuity

awarded to the respondent, the same has not been entertained.

Be that as it may, I am of the view that the impugned judgment and order passed by the controlling authority is wholly without the jurisdiction and the authority of law. The present petition preferred under Article 226 of the Constitution of India is maintainable. There is no dispute that the respondent is a member of the Panchayat service and thus the servant of the State Government. It is also not in dispute that a Government servant in Panchayat service is governed by the specific rules made in that behalf by the State Government. Hence, the provisions contained in the Act of 1972 shall not apply in the case of the respondent. It is apparent that the controlling authority has failed to consider and decide this vital issue which goes to the root of its jurisdiction. As the respondent is not governed by the Act of 1972, the controlling authority had no jurisdiction or authority of law to entertain the claim made by the respondent. The impugned judgment and order are thus passed by the controlling

authority without the authority of law and are vitiated by inherent lack of jurisdiction.

For the aforesaid reasons, the petition is allowed. The impugned judgment and order dated 26th June, 2006 passed by the controlling authority in Gratuity Application No.56/2005 is quashed and set-aside. Rule is made absolute with cost. The sum of Rs.10,000=00 deposited in this Court by the District Panchayat pursuant to the order dated 8th September, 2006 is ordered to be remitted to the petitioner-Junagadh District Panchayat.

(Ms. R.M.Doshit, J.)

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